

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**BARRY GRIFFIN**

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**CRIMINAL NO. 6:08-CR-93-1**

**REPORT & RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On November 9, 2012, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Barry Griffin. The government was represented by Mary Ann Cozby, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by F. R. Buck Files.

Defendant originally pled guilty to the offense of Possession of Material Involving the Sexual Exploitation of Minors, a Class C felony. The offense carried a statutory maximum imprisonment term of 10 years. The United States Sentencing Guideline range, based on a total offense level of 28 and a criminal history category of II, was 87 to 108 months. On June 9, 2009, District Judge Leonard Davis sentenced Defendant to 54 months imprisonment followed by 5 years of supervised release subject to the standard conditions of release, plus special conditions to include sex offender treatment and testing, no contact with minors under the age of 18, and alcohol abstinence. On June 13, 2012, Defendant completed the term of imprisonment and began his term of supervised release.

Under the terms of supervised release, Defendant was required to report to the probation officer and submit a truthful and complete written report every month, in addition to abstaining from the consumption of alcohol. Further, Defendant was prohibited from (1) making contact of any kind with children under the age of 18 unless supervised by an approved adult; (2)

possessing or viewing any images in any form of media or in any live venue that depicts sexually explicit conduct; and (3) purchasing, possessing, or using electronic devices with photographic or internet capabilities that is capable of communicating data via modem, wireless or dedicated connection. In its petition, the government alleges that Defendant violated his term of supervised release when he (1) did not answer the questions in the monthly report truthfully and completely; (2) consumed alcohol 1 to 4 days per week in June, July and August 2012; (3) was alone with a minor on at least two occasions; (4) viewing pornography on a cell phone.

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by failing to submit a complete and truthful written report; failing to abstain from alcohol; having contact with a minor child without approved adult supervision; or viewing pornography on a cell phone, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). The Court may then revoke supervised release or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade C violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, Defendant pled true to the allegations set forth above. The government recommended 10 months imprisonment with 50 months supervised release to follow while defense counsel made a recommendation of 4 months.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Barry Griffin be committed to the custody of the Bureau of Prisons for a term of imprisonment of 10 months with 50 months of supervised release to follow. The Court further **RECOMMENDS** that the place of confinement be FCI Seagoville, Texas.

Defendant has waived his right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

**So ORDERED and SIGNED this 16th day of November, 2012.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE